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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

IN RE: LITHIUM ION BATTERIES
ANTITRUST LITIGATION

Case No. 4:13-md-02420-YGR

MDL No. 2420

This Document Relates to:

All Indirect Purchaser Plaintiff Actions

**INDIRECT PURCHASER PLAINTIFFS'
JOINT PRELIMINARY STATEMENT**

Date: April 3, 2013
Time: 2:00 p.m.
Courtroom: 5
Judge: Yvonne Gonzalez Rogers

As required by ¶ 3(c) of the Court's March 4, 2013 Order Setting Initial Conference (Dkt. No. 8), counsel for all Indirect Purchaser Plaintiffs ("IPP") respectfully submit this Joint Preliminary Statement.

I. INDIRECT PURCHASER PLAINTIFFS' PRELIMINARY UNDERSTANDING OF THE FACTS.

Indirect Purchaser Plaintiffs allege a conspiracy to raise, stabilize, and maintain the prices of "Lithium Ion Batteries" and "Lithium Ion Battery Products." Lithium Ion Batteries are rechargeable batteries that utilize lithium ion technology. Lithium Ion Battery Products include cameras, notebook computers, mobile telephones, smartphones, power tools, personal digital assistants, tablet computers, handheld game consoles, and other products that contain lithium ion batteries. Plaintiffs allege that the conspiracy succeeded in maintaining prices of Lithium Ion Batteries and Lithium Ion Battery Products above competitive levels, which caused Plaintiffs to

1 pay supra-competitive prices.

2 Lithium Ion Batteries are considered secondary batteries, or rechargeable batteries. They
3 possess certain unique performance qualities that make them the most popular form of
4 rechargeable battery. These qualities include increased power, relatively small size and light
5 weight, and absence of the “memory effect” that makes other types of rechargeable batteries such
6 as nickel-cadmium or nickel-metal hydride batteries less desirable. Lithium Ion Batteries are not
7 interchangeable with other secondary batteries. Lithium Ion Batteries are an important power
8 source for various electronics products, including the Lithium Ion Battery Products identified
9 above.

10 Defendants are the world’s largest Lithium Ion Battery manufacturers. Defendants and/or
11 their corporate affiliates have previously orchestrated and been convicted of some of the largest
12 price-fixing conspiracies in history involving related products – conspiracies that over the past 20
13 years artificially raised the prices of various electronics components such as computer chips, LCD
14 television and computer screens, and disk drives.

15 Lithium Ion Batteries first became commercially available in the early 1990s and, at that
16 time, were manufactured exclusively by two Japanese defendants – Sony and Panasonic.
17 However, in the late 1990’s, two Korean defendants – LG Chem and Samsung SDI – entered the
18 Lithium Ion Battery market and began to compete intensely with Sony and Panasonic. This
19 competition led to a dramatic decrease in Lithium Ion Battery prices. In or around the end of
20 2001-beginning of 2002, in order to arrest the price decline, the Defendants entered into the
21 alleged illegal conspiracy. This immediately halted the dramatic decrease in Lithium Ion Battery
22 prices, and throughout the remainder of the alleged class period, there began a period of
23 remarkable stability (with the exception of the Great Recession in 2008) for Lithium Ion Battery
24 prices.

25 Starting in May 2011, Defendants disclosed that the Antitrust Division of the U.S.
26 Department of Justice (“DOJ”) and the European Commission (“EC”) had initiated an
27 investigation for violation of competition laws against manufacturers of Lithium Ion Batteries.
28 The DOJ and the EC have subpoenaed documents from at least several Defendants in the course

of their investigation, and Defendants have disclosed that a grand jury is empanelled in the Northern District of California. It is widely believed that one defendant is cooperating with the government as an amnesty applicant pursuant to the Antitrust Criminal Penalties Enhancement Reform Act, (“ACPERA”), codified at 15 U.S.C. § 1 note.

A. Critical Factual and Legal Issues

The following are some of the legal and factual issues that will arise in the Indirect Purchaser Plaintiff cases:

- Whether the Court has personal jurisdiction over certain Defendants;
- Whether Defendants’ alleged conduct constituted a *per se* violation of Section 1 of the Sherman Act and of state antitrust and consumer protection statutes;
- Whether the amnesty applicant has complied fully and timely with its ACPERA obligations.
- Whether IPPs have adequately pleaded causes of action for the violation of state and federal antitrust laws, and state consumer protection statutes, including under the pleading requirements set forth in *Bell Atlantic Corp. vs. Twombly*, 550 U.S. 544 (2007) and its progeny;
- Whether IPPs may maintain a class action against Defendants;
- Whether the Foreign Trade Antitrust Improvements Act (“FTAIA”), 15 U.S.C. § 6a applies to any of the conduct at issue in this case;
- Whether Defendants have been unjustly enriched by the alleged conspiracy; and
- Whether IPPs are entitled to punitive, actual, and trebled statutory damages, costs, attorneys’ fees, pre- and post-judgment interest, declaratory relief, equitable relief, and any other relief provided for by federal and state law.

II. LIST OF ALL PENDING MOTIONS

IPPs in the following five actions have Motions to Relate pending, filed in the first filed case – *Young, et al. v. LG Chem Ltd., et al.*, No. 4:12-cv-5129 (N.D. Cal.) (“*Young Action*”): Alexandara Le (Dkt. No. 63); Matt Bryant (Dkt. No. 64); Spencer K. Hathaway (Dkt. No. 65); Robert L. McGranahan (Dkt. No. 66); Patrick McGuinness (Dkt. No. 67); Petree (Dkt. No. 68);

Gallardo (Dkt. No. 69); and Tozer (Dkt. No. 71). There are no other prior or pending motions in any of the related cases.

III. LIST OF ALL RELATED CASES PENDING IN STATE OR FEDERAL COURT AND THEIR CURRENT STATUS

IPPs believe all of the related IPP actions are federal actions and no state actions are currently pending. Attached as Exhibit A is a chart of all related federal IPP cases before this Court, including those awaiting relation or transfer from the JPML.

Further, pursuant to certain consumer and/or antitrust state law procedures, one or more additional complaints are filed under seal, pending the decision of one or more state's Attorney General to intervene in this matter.

The Antitrust Division of the Department of Justice is conducting a criminal investigation in the Northern District of California relating to IPPs allegations, and the European Commission has also confirmed such an investigation.

IV. INDIRECT PURCHASER PLAINTIFFS' PROPOSED SCHEDULE

In the *Young* action, Plaintiffs and several Defendants stipulated to, and this Court ordered, a schedule for the filing of Defendants' responsive pleadings. (Stipulation and Order, No. 12-5129, Dkt. No. 24.) The Stipulation and Order affords this extension to any named Defendant that notifies Plaintiffs in writing of its intention to join the Stipulation and Order without requiring further stipulation. Defendants in most actions have so elected.

Once Interim Class Counsel and/or a Plaintiffs' Steering Committee ("PSC") has been appointed, the parties anticipate the filing of a Consolidated Amended Complaint. IPPs respectfully suggest the following schedule:

<u>Event</u>	<u>Date</u>
Initial Conference	April 3, 2013, 2 p.m.
Deadline to submit applications for interim class counsel/membership in PSC	March 28, 2013
Rule 26(f) Conference among IPPs and Defendants (including ESI preservation protocol discussion)	March 18, 2013; continued to within 21 days following the April 3, 2013 conference
Defendants advise Plaintiffs of issues concerning misjoinder or personal jurisdiction	Within 20 days of the April 3, 2013 conference
Discovery – grand jury materials. Defendants produce grand jury documents and information in the form produced to grand jury	14 days after appointment of interim class counsel
Amnesty Applicant meet and confer with Plaintiffs for purpose of proffer and/or disclosures to Plaintiffs	Within 30 days after appointment of interim class counsel
Complaint Filing of IPP Consolidated Amended Complaint	60 days following appointment of class counsel/PSC
Defendants' Response to IPPs' Consolidated Amended Complaint	60 days following filing of IPPs' Consolidated Amended Complaint
IPPs' Opposition to Defendants' Motion(s) to Dismiss (to the extent defendants elect to move to dismiss and not answer)	60 days following filing of Rule 12 Motions
Defendants' Reply Memorandum in Support of Motion to Dismiss	30 days following submission of IPPs' opposition to motion to dismiss
Hearing on Rule 12 Motions	To be set by Court
Class Certification: <i>Dates contingent on Court ordering and Defendants adhering to the dates proposed above.</i> Motion Filed with Expert Reports	September 18, 2014
Defendants' Expert Disclosures	October 18, 2014
Defendants' Opposition Expert Reports	November 18, 2014
Plaintiffs' Reply and Rebuttal Reports	January 31, 2015
Discovery Period for Experts	September 19, 2014 – January 31, 2015
Hearing	February 15, 2015
Discovery Cutoff	May 15, 2015
Trial Date	

1 **V. JURISDICTION AND SERVICE**

2 The Court has subject matter jurisdiction over the related cases on the basis of federal
3 question jurisdiction, 28 U.S.C. §§ 1331, 1337, and/or diversity jurisdiction pursuant to the Class
4 Action Fairness Act, 28 U.S.C. § 1332(d).

5 IPPs served or secured service waivers from each Defendant located in the United States,
6 and initiated the process of translating the complaints and effecting service via the Hague Service
7 Convention on all foreign Defendants.

8 Further service efforts should be halted pending the organization of Plaintiffs' Counsel
9 and the filing of a Consolidated Amended Complaint.

10 Counsel for Indirect and Direct Purchaser Plaintiffs and Defendants met on March 18,
11 2013 in San Francisco to discuss the topics the Court listed in its March 4 Order. At that meeting,
12 Plaintiffs asked that any Defendant which believes it (a) has been mis-joined or (b) will assert a
13 defense of lack of subject matter and/or personal jurisdiction or failure of service to identify itself
14 so the parties may try to resolve the issue promptly and without motion practice. Plaintiffs asked
15 that Defendants inform Plaintiffs of these issues within 15 days, so that Plaintiffs may attempt to
16 resolve these issues efficiently and with a minimal amount of expense and burden for all parties
17 prior to the filing of a consolidated amended complaint. Defendants responded that any
18 individual defendant that will raise issues concerning misjoinder or personal jurisdiction will do
19 so within 20 days of the April 3 conference and contact Plaintiffs individually to attempt to
20 resolve them.

21 **VI. EVIDENCE PRESERVATION**

22 Plaintiffs have adhered to this Court's requirement regarding the preservation of records
23 as set forth in paragraph 4(d) of the March 4, 2013 Order, and have proposed an initial conference
24 with Defendants to reach agreement on an ESI protocol. Defendants have agreed to consider this
25 proposal. Defendants also noted that each Defendant is differently situated, and thus
26 individualized negotiations will be necessary.

1 **VII. DISCOVERY CONFERENCE AND DISCLOSURES**

2 On March 18, 2013, consistent with the Order, the parties met and conferred to discuss a
3 proposed discovery plan pursuant to Rule 26(f) and a suggested schedule under Rule 16(b) for the
4 joinder of parties, amendment of pleadings, consideration of any class action allegations, motions,
5 and trial. *See generally* Standing Order for All Judges of the N. Dist. of Cal. (Nov. 27, 2012);
6 Guidelines for the Discovery of Electronically Stored Information.

7 Plaintiffs requested that Defendants produce all documents produced to the Grand Jury
8 and the DOJ within 14 days of the March 18 meeting (April 3) and that Defendants provide Rule
9 26(f) disclosures identifying the custodians for whom documents had been produced to the DOJ
10 and those custodians' supervisors. Plaintiffs offered to forgo serving any discovery requests until
11 they had reviewed those documents and disclosures. Plaintiffs offered to accept all documents in
12 whatever format they exist and subject to any confidentiality designation Defendants choose.

13 Defendants have made clear that prior to the Court upholding the Consolidated Amended
14 Complaint, they refuse to address any substantive or scheduling issues concerning discovery,
15 contrary to Rule 26, this Court's Local Civil Rules, the ESI Guidelines, and what Plaintiffs
16 understand this Court's March 4 Order to require.

17 Defendants refuse to produce any documents that they provided to the DOJ, and claim that
18 the identity of the custodians whose documents were produced to the DOJ is "attorney work
19 product." Defendants said their Discovery Plan is no discovery until after the Court rules on any
20 Rule 12 motions, although Defendants said they would consider serving Rule 26(a)(1) Initial
21 Disclosures after Plaintiffs file Consolidated Amended Complaints.

22 The parties did agree to meet and confer on a protective order.

23 **VIII. LIST OF AFFILIATED COMPANIES AND COUNSEL**

24 Pursuant to ¶ 3(d) of the Order Setting Initial Conference, Exhibit B is a list of companies
25 affiliated with the parties. Further, a list of all counsel associated in the litigation appears on the
26 signature lines below.

IX. **ADDITIONAL TOPICS INCLUDED ON EXHIBIT A TO MARCH 4 ORDER**

A. **Areas of Agreement**

1. **Creation of Master Docket**

The parties agree that it is most efficient if all documents are filed electronically in a single master docket, Case No. 4:13-MD-02420-YGR. In the event parties file opt out (also called “direct action”) cases, the Court may determine it will be efficient if parties file documents both in their individual case and in the master docket. *See, e.g., In Re: TFT-LCD (Flat Panel) Antitrust Litig.*, Case No. M 07-1827-SI, slip op, (N.D. Cal. Oct. 15, 2012) (attached as Exhibit C.)

2. **Discovery Served by Email**

The parties agree that all discovery and discovery responses shall be served by email with no need to serve paper copies. The parties request the Court order that Federal Rule of Civil Procedure 6(d) will not apply.

B. **Other Topics**

1. **Referring Discovery to Magistrate Judge**

IPPs believe it is appropriate at this early stage in the litigation to present any discovery issues to a Magistrate Judge.

2. **Appointment of Plaintiffs’ Liaison, Lead, Trial Counsel, Steering Committee; Maintaining Time and Expense Reports.**

IPPs, through their counsel, have had numerous discussions regarding which firms the Court should consider appointing to lead the litigation. To date, no agreement has been reached. Counsel wish to discuss with the Court at the April 3 conference its guidance regarding the appointment of interim lead or co-lead counsel, liaison counsel, and the duties and membership of the Plaintiffs’ Steering Committee.

IPPs’ counsel agree that monthly time and expense reporting is necessary. Maintaining and auditing such reports should be the responsibility of interim lead or liaison counsel.

1 **3. ADR**

2 IPPs, pursuant to the Court's agenda item, advised Defendants that they are willing to
3 engage in early mediation alternative dispute resolution. Defendants declined.

4
5 Dated: March 28, 2013

Respectfully submitted,¹

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EXHIBIT A

**Related Federal IPP Cases Pending in N.D. Cal.
(as of March 28, 2013, including those pending relation or transfer from MDL)**

<i>Young v. LG Chem Ltd., et al.</i> , No. 4:12-cv-5129 (N.D. Cal.)	<i>Cohen v. LG Chem, Ltd. et al.</i> , No. 3:13-cv-761 (N.D. Cal.)
<i>Hanlon v. LG Chem, Ltd., et al.</i> , No. 4:12-cv-5159 (N.D. Cal.)	<i>Russo et al v. LG Chem, Ltd. et al.</i> , No. 3:12- cv-2505 (S.D. Cal.)
<i>Katz-Lacabe v. Hitachi Ltd., et al.</i> , No. 4:12-cv-5681 (N.D. Cal.)	<i>Miller et al v. LG Chem, Ltd. et al.</i> , No. 3:12- cv-2531 (S.D. Cal.)
<i>Pham et al v. Hitachi Maxell Ltd. et al.</i> , No. 4:12-cv-5938 (N.D. Cal.)	<i>Van Patten v. LG Chem, Ltd. et al.</i> , No. 3:12- cv-2615 (S.D. Cal.)
<i>Powers v. LG Chem America, Inc. et al.</i> , No. 3:12-cv-6118 (N.D. Cal.)	<i>Turner et al v. LG Chem, Ltd. et al.</i> , No. 3:12- cv-2658 (S.D. Cal.)
<i>Martinez v. LG Chem., Ltd., et al.</i> , No. 4:12-cv-6151 (N.D. Cal.)	<i>Batey v. LG Chem America, Inc. et al.</i> , No. 2:12-cv-6555 (D.N.J.)
<i>Johns v. Hitachi Ltd. et al.</i> , No. 3:12-cv-6152 (N.D. Cal.)	<i>A-1 Computers, Inc. v. LG Chem, Ltd. et al.</i> , No. 2:12-cv-6581 (D.N.J.)
<i>D'Orazio v. LG Chem., Ltd., et al.</i> , No. 3:12-cv-6173 (N.D. Cal.)	<i>Shawn et al v. LG Chem America, Inc. et al.</i> , No. 2:12-cv-6793 (D.N.J.)
<i>Rojanasathit v. Samsung SDI America, Inc. et al.</i> , No. 3:12-cv-6183 (N.D. Cal.)	<i>Doyle v. LG Chem America et al.</i> , No. 2:12-cv- 7633 (D.N.J.)
<i>Levy v. LG Chem, Ltd., et al.</i> , No. 3:12-cv-6446 (N.D. Cal.)	<i>Cohen et al v. LG Chem America, Inc. et al.</i> , No. 2:12-cv-7793 (D.N.J.)
<i>Bugge v. LG Chem, Ltd et al.</i> , No. 3:12-cv- 6492 (N.D. Cal.)	<i>Conover et al. v. LG Chem America, Inc. et al.</i> , No. 2:13-cv-190 (D.N.J.)
<i>Marcus v. LG Chem et al.</i> , No. 4:13-cv-339 (N.D. Cal.)	<i>Molfetas v. LG Chem Ltd. et al.</i> , No. 2:13-cv- 541 (D.N.J.)
<i>Lepore v. LG Chem, Ltd., et al.</i> , No. 3:13-cv- 361 (N.D. Cal.)	<i>Tuohy v. LG Chem, Ltd. et al.</i> , No. 2:13-cv-557 (D.N.J.)
<i>Tozer v. LG Chem Ltd., et al.</i> , No. 3:13-cv-397 (N.D. Cal.)	<i>Sclar v. LG Chem America, Inc. et al.</i> , No. 2:13-cv-592 (D.N.J.)

1	<i>Cabral et al v. Hitachi Maxwell, Ltd. et al</i> , No. 3:13-cv-686 (N.D. Cal.)	<i>Thompson et al v. Toshiba Corporation et al.</i> , No. 1:12-cv-12419 (D. Mass.)
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3	<i>Tolchin v. LG Chem, LTD. et al.</i> , No. 3:13-cv-700 (N.D. Cal.)	<i>Billingsley v. L.G. Chem America, et al.</i> , No. 2:12-cv-06973 (D.N.J.)
4		
5	<i>Le v. LG Chem, Ltd. et al.</i> , No. 3:13-cv-708 (N.D. Cal.)	<i>O'Daniel v. LG Chem, Ltd., et al.</i> , No. 4:13-cv-00182 (W.D. Mo.)
6		
7	<i>Yee v. LG Chem, LTD. et al.</i> , No. 3:13-cv-703 (N.D. Cal.)	<i>McGranahan v. LG Chem, LTD., et al.</i> , No. 13-CV-975 (N.D. Cal.)
8		
9	<i>Hathaway v. LG Chem, LTD., et al.</i> , No. 13-CV-926 (N.D. Cal.)	<i>Bryant v. LG Chem, LTD., et al.</i> , No. 12-CV-5129 (N.D. Cal.)
10		
11	<i>McGuinness v. LG Chem, LTD., et al.</i> , No. 13-CV-929 (N.D. Cal.)	<i>Petree v. LG Chem, Ltd, et al.</i> , Case No: 3:13-CV-0976 (N.D. Cal.)
12		
13	<i>Galardo v. LG Chem, Ltd., et al.</i> , No. 13-cv-1030 (N.D. Cal.)	<i>Lincoln v. LG Chem, Ltd., et al.</i> , No. 13-cv-1131 (N.D. Cal.)
14		
15	<i>Hernandez v. LG Chem, Ltd., et al.</i> , No. 13-cv-1189 (N.D. Cal.)	<i>Ames v. LG Chem, Ltd., et al.</i> , No. 13-cv-1194 (N.D. Cal.)
16		
17	<i>Jawor v. LG Chem, Ltd., et al.</i> , No. 13-cv-1166 (N.D. Cal.)	<i>Juncaj et al. v. LG Chem, Ltd et al.</i> , No. C 13-01379 JSC (N.D. Cal.)
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EXHIBIT B

List of Companies Associated with Indirect Purchaser Plaintiffs

None.

ATTESTATION

Pursuant to Civil Local Rule 5-1(i)(3), the filer of this document attests that concurrence in the filing of this document has been obtained from signatories indicated with an “/s/” above.

Dated: March 28, 2013

By: /s/ *Eric B. Fastiff*
Eric B. Fastiff